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The "Leaks" Provision

What it says:

- applies to current & former employees, officers, contractors
- who have/had authorized access to classified information
- who willfully and knowingly discloses properly classified information
- to a person who is not authorized access to such classified information
- knowing that person is not authorized to receive such information

- The statute does NOT apply to disclosures to:
  - federal courts
  - Congress
  - persons acting on behalf of a foreign power (or IO) if made by
    - an officer/employee of US authorized to make disclosure
      - AND
    - is within scope of officer/employees duties
  - any person authorized to receive classified information

Why It's Necessary:

- current law covers only national defense information and cryptographic systems
- current law does not cover foreign liaison intel, covert action, CI capabilities, covert bank accounts, proprietaries, sources/methods, human intel, narcotics,
- leaks are damaging liaison relationships, technical collection and human assets
- damage caused by leakers is every bit as serious as damage caused by espionage
- loopholes in law limits me to revoking clearances – but only if still employed
- failure to enact provision will send message to foreign govts we are not serious
  - foreign liaison and govts are crucial to current C/T and WMD efforts
- there should be no zone of impunity for government officials who leak secrets
- there is no constitutional right to leak secrets regardless of motivation
- this is not a political issue – it is a national security issue that must be addressed

What It's Not:

- it is not unconstitutional: narrowly drafted with DoJ, specific intent crime
- does not apply to inadvertent disclosures or mistaken understandings
  - must be done "knowingly and willfully"
- does not apply to the press; AG guidelines in place to ensure no misuse
  - press has never been subpoenaed or indicted under current criminal laws
- this is not a panacea which will stop leaks; it is an arrow in the DoJ quiver

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maximizes the procurement of products properly designated as having been made in the United States.

SEC. 304. PROHIBITION ON UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION.

(a) IN GENERAL.—Chapter 37 of title 18, United States Code, is amended—

(1) by redesignating section 798A as section 798B; and

(2) by inserting after section 798 the following new section 798A:

"§ 798A. Unauthorized disclosure of classified information

"(a) PROHIBITION.—Whoever, being an officer or employee of the United States, a former or retired officer or employee of the United States, any other person with authorized access to classified information, or any other person formerly with authorized access to classified information, knowingly and willfully discloses, or attempts to disclose, any classified information acquired as a result of such person's authorized access to classified information to a person (other than an officer or employee of the United States) who is not authorized access to such classified information, knowing that the person is not authorized access to such classified information, shall be fined under this title, imprisoned not more than 3 years, or both.

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"(b) CONSTRUCTION OF PROHIBITION.—Nothing in this section shall be construed to establish criminal liability for disclosure of classified information in accordance with applicable law to the following:

"(1) Any justice or judge of a court of the United States established pursuant to article III of the Constitution of the United States.

"(2) The Senate or House of Representatives, or any committee or subcommittee thereof, or joint committee thereof, or any Member of Congress.

"(3) A person ~~or~~ persons acting on behalf of a foreign power (including an international organization) if the disclosure—

"(A) is made by an officer or employee of the United States who has been authorized to make the disclosure; and

"(B) is within the scope of such officer's or employee's duties.

"(4) Any other person authorized to receive the classified information.

"(c) DEFINITIONS.—In this section:

"(1) The term 'authorized', in the case of access to classified information, means having authority or permission to have access to the classified information pursuant to the provisions of a statute, Executive

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order, regulation, or directive of the head of any department or agency who is empowered to classify information, an order of any United States court, or a provision of any Resolution of the Senate or Rule of the House of Representatives which governs release of classified information by such House of Congress.

"(2) The term 'classified information' means information or material properly classified and clearly marked or represented, or that the person knows or has reason to believe has been properly classified by appropriate authorities, pursuant to the provisions of a statute or Executive order, as requiring protection against unauthorized disclosure for reasons of national security.

"(3) The term 'officer or employee of the United States' means the following:

"(A) An officer or employee (as those terms are defined in sections 2104 and 2105 of title 5).

"(B) An officer or enlisted member of the Armed Forces (as those terms are defined in section 101(b) of title 10).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by striking the item relating to section 798A and inserting the following new items:

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SEC. 303 SENSE OF THE CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING

Section 303 is identical to section 303 of the House bill. The Senate amendment had no similar provision. The Senate recedes to the House provision.

SEC. 304 PROHIBITION ON UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION

Section 304 is identical to section 303 of the Senate amendment. The House bill had no similar provision. The House recedes.

Unauthorized disclosures of sensitive intelligence information are of great concern. Such disclosures, regardless of whether they involve an intelligence "success" or "failure," can compromise irreplaceable sources and methods, and in some cases, can directly endanger lives.

The managers note that the current Executive Order governing classified national security information (E.O. 12958) requires that, in order to classify information, the original classifying authority must determine that unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority must be able to identify or describe the damage. The managers further note that the current Executive Order specifically prohibits the classification of information in order to conceal violations of law, inefficiency, or administrative error or to prevent embarrassment to the government.

It is the intent of the managers that the government may meet its burden of proof under this statute by proving that the information was classified under the applicable statute or Executive Order. The government should not be required to prove that damage to the national security actually has or will result from the unauthorized disclosure. Subsection (c)(2) is not

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intended by the managers to create a defense based on a technical error in the classification markings, or the lack thereof, or to create a right of the defendant to dispute the propriety of the President's classification decision. The managers believe that requiring the government to prove that the classified information is or has been properly classified under an applicable statute or Executive Order strikes the appropriate balance between protecting only that information that would damage the national security if disclosed and not creating a burden of proof that is so great that the government could never meet its burden without having to disclose unnecessarily additional classified information.

SEC. 305 AUTHORIZATION FOR TRAVEL ON ANY COMMON CARRIER

Section 305 is similar to Section 304 of the House bill. The Senate amendment had no similar provision. The Senate recedes, with amendment.

Section 4(b)(3) of the CIA Act of 1949, as amended, provides the DCI with authority to promulgate regulations governing travel requirements for CIA officers and other federal government employees or members of the Armed Services detailed to the CIA.

Subject to regulation, CIA employees and detailees to the CIA may be permitted to use non-American-flag airlines when it is determined to be essential to satisfy mission requirements. The managers believe that this type of flexibility is necessary for other personnel of the Intelligence Community carrying out intelligence community mission requirements, given the nature of the work of the Intelligence Community. This provision is not intended to supersede the CIA's current regulation relating to this matter. Rather, it is a complementary provision

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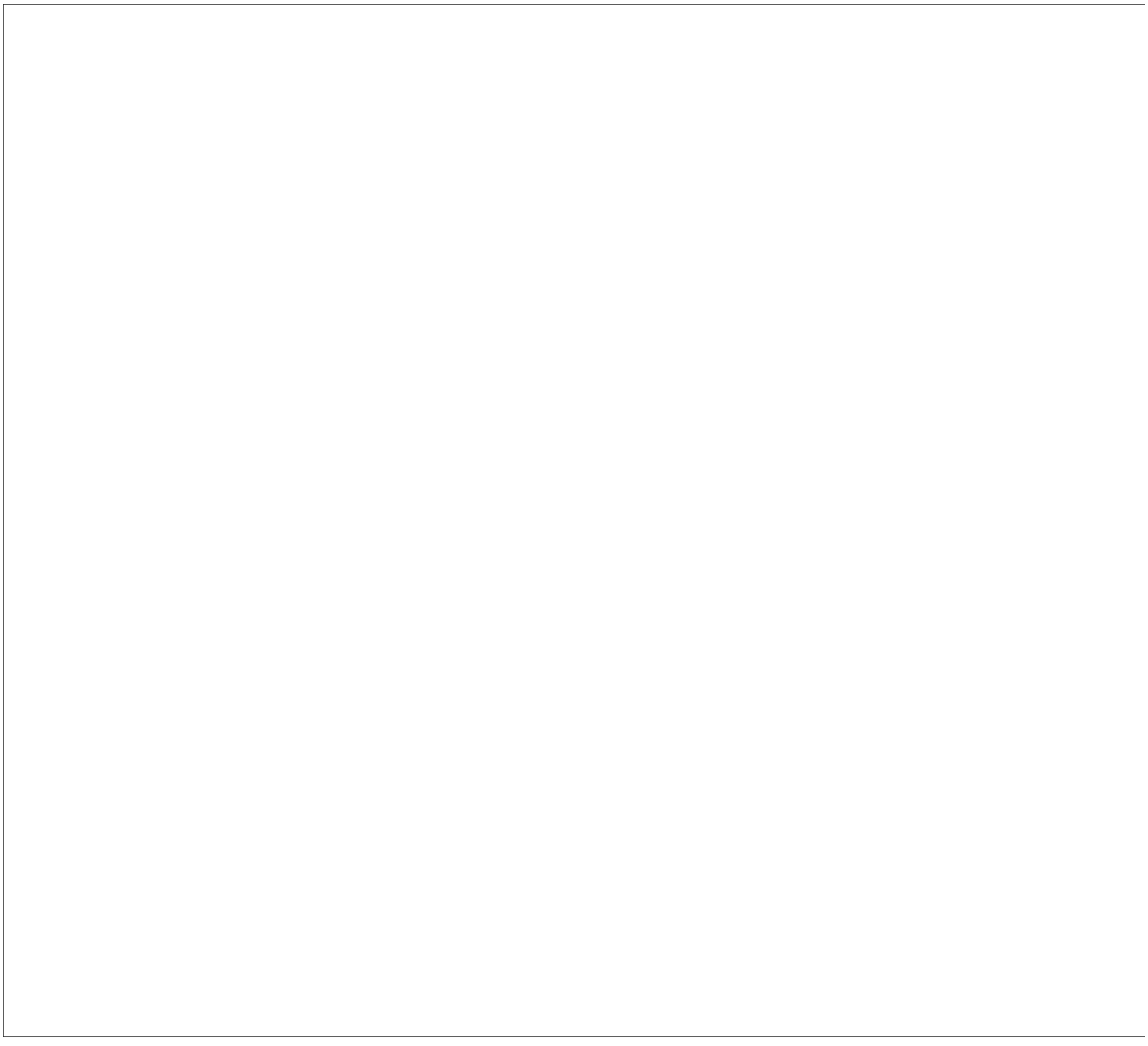
(b)(3)



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